

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JULY 5, 2016**

**CALL TO ORDER
6:00 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Gina Klempel, Mark Hash, Ole Netteberg and Roger Noble. Cal Dyck had an excused absence. Rachel Ezell, Donna Valade, and Kari Nielsen represented the Flathead County Planning & Zoning Office.

There were 24 people in the audience.

**APPROVAL OF
MINUTES
6:00 pm**

Noble motioned and Netteberg seconded to approve the June 7, 2016 minutes as provided in the meeting packet.

The motion passed by quorum.

**PUBLIC
COMMENT
(Public matters
that are within
the jurisdiction
of the Board 2-
3-103 M.C.A)
6:04 pm**

None

**FCU-16-05
CAROLYN
DEWEY
6:04 pm**

A request from Carolyn Dewey, for a conditional use permit to establish a "Camp and Retreat Center" on property located within the Blanchard Lake Zoning District and zoned AG-20 (Agricultural). The applicant intends to develop a small retreat center incorporating farming, silviculture, health and wellness. The subject property is located at 127 Hideaway Trail and contains approximately 10.03 acres. **This is a continuation of the May 3, 2016 Board of Adjustment meeting.**

**STAFF REPORT
6:04 PM**

Ezell reviewed the updated Staff Report FCU-16-05 for the Board.

**BOARD
QUESTIONS
6:08 PM**

Hash asked if Ezell had a chance to review all the additional information that was submitted.

Ezell stated she had.

**APPLICANT
PRESENTATION
6:08 pm**

Carolyn Dewey-127 Hideaway Trail-spoke to the history of why she came to apply for the conditional use permit. Dewey stated she has had a home occupation as a licensed massage therapist and then as a healing arts and herb

farm. Dewey summarized by saying she was trying to integrate her home occupation and farm activity into one entity "Spirit Works Herb Farm and Healing Arts Sanctuary". The conditional use permit would allow expansion of the bunkhouse to allow silviculture and herb classes, her home occupations teaching and session activities, and offer a space for farm stay guests. Dewey stated that granting the conditional use permit would allow her to create a sustainable life style and educate others about growing healthy foods.

Dewey stated she had talked with the Department of Environmental Quality and addressed their concerns. She wanted a small camp and retreat center and she stated the rating on her well would be fine. A new permit was not needed, and she would not need a public water supply because of her usage.

Dewey stated she met with the Environmental Health and Sanitation Department who referred her to environmental and sanitation engineers and she has engaged them to work with her.

She spoke with the County Building Inspector and the State Bureau Chief who helped her clarify the building code requirements for different building code designations. Dewey stated that she chose not to have a building that met the commercial codes to allow for short stay ecotourism and vacation rentals, instead she revised her plans to require a minimum of 30 days or longer. She stated that the bunkhouse qualifies as a residential accessory farm structure allowed on a farm and would not require a permit for stays over 30 days.

Dewey spoke with the Noxious Weed Department and has an approved noxious weed management plan.

Dewey stated after speaking with the Environmental Health Department she decided not to have a commercial kitchen.

Dewey stated what she envisioned was bringing certified herbalists and naturopaths in for month long medicine making, selling fresh herbs and potted plants and offering classes for people to learn about herbs.

Dewey spoke about the tent sites stating they would be located in a mutually agreeable place.

Dewey gave the Board a copy of a memorandum of understanding by and between her and Jeff Jensen regarding the easement which would address condition seven (7). Dewey asked that a Road User's Agreement not be a condition of the permit as she felt her neighbors would not participate. She had the road surveyed and submitted a copy of the survey. She asked that the Board allow for a narrower easement from the area behind the storage buildings.

Dewey stated that the process of investigating what is allowed and what she needed to do to meet requirements had caused her to shift her plans. (1) Short stay ecotourism as mentioned on her website and face book page have morphed into longer farm stay emersions with amenities of a healing retreat center, organic foods, and farming lifestyle. She referred to an exhibit received from attorney Kalvig regarding farm stays. Dewey stated she would require a

minimum of 30 day stays due to the non-commercial bunkhouse building that she has and to stay within the county regulations. (2) Privacy was a concern of the neighbor, Steve Pleasants, so she installed a privacy fence along her southern boundary and privacy screens in the bunkhouse that face his yard. She stated that to mitigate noise, she built straw bale walls between the privacy fence and the areas where meals and farm meetings take place. The wooden fence is designed in a manner to reduce noise with offset overlapping boards. (3) Regarding smoke, smoke from the campfires or wood fired hot tub are mitigated by prevalent west to east winds and any smoke is carried parallel to the fencing.

Dewey stated that the purpose of the farm is to grow artisan quality medicinal herbs in a learning and health building environment. She hopes, with the conditional use permit to offer month long intensive immersion courses on farming, herbs, and health-building practices.

Dewey addressed safety concerns, stating she had a strict policy on drugs, alcohol, tobacco, and firearms. She stated that there have been no formal or informal complaints in the three (3) years she has operated this farm.

Dewey stated she had lifestyle and standards in place that strictly regulate hours of operation, noise levels, and safety.

Dewey addressed concerns about traffic stating that the people staying at the farm do not move on and off the property on a daily basis. Guests usually stay put during the week and explore the surrounding areas on weekends. Guest will be staying a minimum of 30 days with no daily or overnight stays.

**BOARD
QUESTIONS
6:47 pm**

Netteberg asked Dewey why when she had 10 acres was everything in the front corner of the property right next to the neighbors.

Dewey explained why the gardens needed to be where they are.

**PUBLIC
COMMENT
6:49 PM**

Doug Scotti-341 Central Ave, Whitefish-stated he was the attorney representing the applicant. Scotti stated that one of the concerns of Pleasants was that someone could see into his yard from the bunkhouse. He submitted pictures of the privacy glass installed on these windows and stated that no one could see into Pleasants yard with the privacy glass in place.

Scotti stated that any issues arising in the future with the fire-pits or noise nuisance would be addressed immediately.

He stated that the covenants were not an issue as they were not being violated.

Scotti addressed the court cases cited in Kalvig's response, stating that most of them had to do with subdivisions and were not relevant to this application. Most of them had to do with subdivision where the environmental assessment was clearly insufficient and the court struck them down.

Scotti stated that if you read section six (6) of the Covenant, Conditions, and

Restrictions (CCR's), this isn't a wholesale or retail business that will incur above average vehicular traffic. There is no evidence of that.

Scotti stated that the CCR's would limit Dewey's business to the inside of her house if anything, but allowed her farm and out buildings. He stated Kalvig acknowledged that when he said that limited commercial activity was allowed.

Scotti talked about the history of the property, if history was important as argued, the opposition was that this neighborhood was never supposed to have this sort of thing there. The person that owned the property before Dewey ran Full Throttle Entertainment Laser Tag Park. That was a for profit commercial entity on the same property. It never was an issue in the past; no formal complaints had been filed about noise or anything on the property before. Scotti stated the if Full Throttle Entertainment Laser Tag Park was in conformance with the CCR's, then Dewey's property had to be.

Scotti stated that the case of Clark v. Pennock case that had been addressed a couple of times about the "evolutionary" versus "revolutionary" issue with the covenants, that involved a landowner that wanted to drive over someone else's property and didn't have the easement to do it. The judge read the easement, it wasn't allowed. It's that simple. Scotti stated that in his reply from May 16, 2016, Montana law in servitudes allows Dewey's use. The analysis isn't as simple as saying that because no one in the past had used it to access a small farm, it can't be allowed now. The question is do the easement laws and CCR's allow it, and in this case, home businesses and "cottage industries" are expressly allowed in the CCR's and they don't restrict expanding access easements to the property.

Scotti stated that if there had been no noise or nuisance complaints at all on Dewey's property in the past from prior quasi commercial uses, and nothing is going to change, then he doesn't see an issue at this point.

Scotti spoke about the things that Dewey had already done to address the concerns of the neighbors.

Noble asked about the sixty (60) foot easement, asking if Dewey could legally widen the road to a twenty (20) foot surface that would conform to the conditions of this permit.

Scotti said yes.

Kalvig stated he is the attorney representing the neighbor Steve Pleasants. Kalvig stated that the proposed use was not appropriate in that single family residential neighborhood. He spoke about the five (5) buildings and nine (9) campsites that would be used for housing, the number of people that would be staying, the twenty-seven (27) parking spaces, and the activities that would be going on until 10:30 pm or 11:00 pm every night of the year.

Kalvig stated that the farm stays sounded like a place where people could go on vacation, just like Disneyland, or Silverwood, but in an agricultural setting. It sounded like a vacation resort to him. He stated that was not the vision spelled

out in the CCR's and it was not close to what the history of the neighborhood had been. He stated that this was just the beginning and wondered what else would be developed on this property.

Kalvig stated that zoning regulations require that all conditional use criteria be met in order for the permit to be granted. Kalvig stated that they were not.

Kalvig stated that updated finding one (1) was not met; he stated that he did not feel there was adequate usable space because there was not enough buffering for the neighbors for the intensity of the proposed use. Updated finding two (2) was not met per the staff report. Updated finding three (3) there was not enough information to know whether there were constraints or not. Updated finding five (5) he agreed that the proposed traffic circulation does not appear to be appropriately designed. Updated finding seven (7), he did not feel that the fencing adequately shielded the building from view. Updated finding (8), neither the public nor the staff have any information to make that finding. Updated finding ten (10), Kalvig stated he did not know how fire trucks would get in and out. He stated that an additional finding regarding the CCR's and what they would allow needed to be added as a condition.

Kalvig stated that as far as the conditions of approval, on condition one (1) the site plan is incomplete. With regard to condition two (2) there should be a limit placed on what Dewey can do in the future. With regard to condition nine (9) the hours of operation should be modified. With regard to condition ten (10) road user's agreement, the county cannot mandate those terms. With regard to condition twelve (12), his client would not enter into an agreement to allow this use. Kalvig stated he needed clarification on condition thirteen (13) and fourteen (14).

Kalvig stated that an additional condition should address the fact that people would be staying in buildings where no building permit had been issued.

Kalvig addressed some of the comments made by the applicant and her attorney. He stated regarding the interns and woofers, he felt there were issues with employment law and what these people were doing on the property.

Kalvig talked about Dewey meeting with various people from various departments and stated that none of that was made part of the application. He stated that the members of the public and his client had a right to that information.

Kalvig stated that the application and the site plan were incomplete. He stated the application did not provide an overview of what the business would be. He talked about an agreement with the neighbor about the tents being moved to a mutually agreeable site, but it did not specify where they would be moved. Kalvig stated this should have been part of the site plan. Kalvig stated he did not have any information on the improvements to the road that Dewey talked about, so he did not know if this would encroach on any of the neighbor's properties. Kalvig stated that the proposed use of hay bales as a sound buffer may create a

fire hazard.

Kalvig stated he disagreed with Scotti's conclusion that the easement could be expanded on his clients' property.

Kalvig spoke about the court cases he cited, saying that he thought the point was that if there was information that was supposed to be provided that was not provided the district court judges have not been patient with that. He stated that any approval that was granted was at risk of being voided.

Kalvig stated that he brought up the Myer's wedding center, he provided the staff reports just to show that it has been the position of the planning and zoning office before when an applicant is asking to have a conditional use approved it now creates what would be a principal use on that property and there is already a single family home on property that in that case the planning and zoning office's position was that there was now two principle uses on the property. Kalvig stated that he did not feel this application was any different.

**STAFF
REBUTTAL
7:16 PM**

None

**APPLICANT
REBUTTAL
7:16 pm**

None

**BOARD
QUESTIONS
7:17 PM**

Hash asked about the road maintenance agreement and asked if Ezell would have a problem if they deleted it.

Ezell said no.

Hash asked about the hours of operation and if Ezell thought they were still appropriate.

Ezell stated that those were the hours of operation stated on the application, but knowing that there was opposition to them, they could be modified.

Hash asked about the completeness of the application and the site plan and if Ezell believed they were complete.

Ezell said yes because what the requirements list is that the buildings and structures be listed on the site plan and per the definition this is permanent structures. Ezell stated that the moving of the tents was important; she noted that the camp and retreat center conditional use standards do note that a maximum of 20% of the camps area may be utilized for recreational vehicle parks and campgrounds.

Hash asked if the applicant moved the tents would the planning office need to make sure it was still in compliance.

Ezell said yes.

Hash asked about the principal uses on the property.

Ezell stated that she confirmed this with the planning director, and that the planning office had historically allowed single family dwellings, even if they had been placed on there first, to be utilized as employee housing. There are a number of camp and retreat centers that have housing. She stated uses on the property could change. In this case it went from a single family structure to being incorporated into the camp and retreat center.

The board discussed the road and easement.

Klempel asked about the building not being designated as commercial use.

Dewey stated that it was her understanding that she had to meet commercial building code requirements if she had people staying for less than 30 days.

Klempel asked Dewey if she was familiar with Wild Urban Interfacing with regard to fire suppression.

Dewey said no.

Dewey stated that the buildings had been inspected.

Hash asked Dewey about the hours of operation.

Dewey requested 4 days a month a curfew of 11 pm and the rest of the days could be 10 pm or 9:30 pm.

Hash asked Kalvig to repeat the conditions he would like to add if the permit was approved.

Kalvig stated commercial building permits should be required, the stays should be 30 days or longer, and no further expansion.

**BOARD
DISCUSSION
7:34 pm**

The board discussed the condition about the width of the road.

Klempel stated that her main concern was fire suppression.

Ezell stated that the fire department was contacted and stated that they had no concerns.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-16-05)
7:44 pm**

Noble made a motion seconded by Klempel to adopt the updated Findings-of-Fact as written.

**BOARD
DISCUSSION
7:45 pm**

None

ROLL CALL TO

On a roll call vote the motion passed unanimously.

**ADOPT F.O.F.
(FCU-16-05)
7:41 PM**

**MAIN MOTION
TO APPROVE
7:45 pm**

Noble made a motion seconded by Klempel to accept Staff Report FCU-15-02 as Findings-of-Fact and Approve the Conditional Use Permit with the following changes in the conditions:

- The condition pertaining to the Road Users Agreement was removed.
- Addition of condition: Quiet hours for the camp and retreat center shall start at 9:00PM and end at 6:00 AM for all but 4 days per month when quiet hours will begin at 11:00PM and end at 6:00AM.
- Addition of condition: Guests of the Camp and Retreat Center shall stay for no less than 30 days at a time.
- Addition of condition: A Wildland Urban Interface Plan shall be developed and reviewed by the Montana Department of Natural Resources and Conservation.
- Addition of condition: Buildings utilized by the Camp and Retreat Center shall have building inspections done commensurate with the type of use.

**BOARD
DISCUSSION
7:50 pm**

None

**ROLL CALL TO
APPROVE
7:50 pm**

On a roll call vote the motion passed unanimously.

**STEVEN &
CYNTHIA
NORRED
(FZV-16-03)
7:55 pm**

A request from Steven & Cynthia Norred for a zoning variance to property within the Bigfork Zoning District currently zoned 'SAG-10 Suburban Agriculture'. The request is for a variance to Section 5.01.030(2) of the Flathead County Zoning Regulations which states "No accessory structures except fences or hedges shall be constructed in any front yard." The property is located at 140 Conifer Lane in Bigfork, MT and contains approximately 5.7 acres. **This agenda item will be reviewed by the Labrant-Lindsey Lane Land Use Advisory Committee on Monday, June 27, 2016 @ 7:00 pm in the conference room of the Flathead County Planning & Zoning Office, 1035 First Avenue West in Kalispell.**

STAFF REPORT
7:55 pm

Ezell reviewed Staff Report FZV-16-03 for the Board.

BOARD
QUESTIONS
8:00 pm

Hash stated that the Bigfork Land Use Advisory Committee (BLUAC) recommended approval with amended conditions; he asked if Ezell still stood by her report and recommendation.

Klempel asked about the applicant receiving erroneous information.

Ezell stated she was not sure the context of the erroneous information.

Noble asked how long the structure had been complete.

Ezell stated it was not complete.

APPLICANT
PRESENTATION
8:04 pm

Tom Tornow-309 Wisconsin Ave, Whitefish-stated he is an attorney who represents the applicants. He stated the applicants are allowed to have the building, it was just a question of where. Tornow stated that the previous owner had built the house in the southwest corner of the property and faced the house west. The house has a small front yard but the bulk of the property is behind the house. The property was zoned after the house was built and the zoning regulations state the front yard is the property adjoining the road. Thus, when the property was zoned the property in front of the house legally became the back yard and behind the house became the front yard, and because the regulations prohibit structures in the front yard the bulk of the property became unbuildable.

Tornow stated the applicants called the planning office on several occasions and were told they could build the structure in that specific location. After, a neighbor inquired with the planning office and was told he could not build in the front yard, it was determined that the Norred's had been given incorrect information. Tornow stated that by this time the Norred's had already poured the foundation.

Tornow stated that in 2008 the Montana Supreme Court issued a decision stating the planning board has the authority to authorize variances in situations where literal enforcement of the zoning laws would result in an unnecessary hardship. He stated that in this case requiring the Norred's to tear up the foundation that they were told they could have would result in an unnecessary hardship.

Tornow stated that the staff report indicates that there are alternative locations for the shop, however, the first location mentioned would be right outside the Norred's front door blocking their view and the planning office admitted this was illogical; the second would require fill, engineering and removal of trees.

Tornow stated that the amount of fill required would make the driveway inaccessible to emergency vehicles which is certainly unnecessary hardship.

Tornow stated that agency comments came back with no negative comments, and the two public comments that were against it have since withdrawn their objections. He stated that the BLUAC amended the findings and recommended approval.

**BOARD
QUESTIONS**

8:13 pm

None

**PUBLIC
COMMENT**

8:13 pm

None

**STAFF
REBUTTAL**

8:14 pm

None

**APPLICANT
REBUTTAL**

8:14 pm

None

**BOARD
DISCUSSION**

8:14 pm

Hash asked if a mistake was made, was there no relief in the variance procedure.

Ezell stated not to her knowledge.

Hash asked if there was anything that Tornow said regarding the incorrect information that Ezell thought was incorrect.

Ezell stated no.

Noble asked if this was strictly a shop or was there water, and toilet amenities also.

Norred stated no.

Noble asked what the building showing on the site immediately to the north of the Norred shop was.

Ezell stated it was not fully enclosed, maybe a riding arena, definitely not the principle structure. However, that property does have accessory structures located in front of the single family dwelling.

**MAIN MOTION
TO ADOPT F.O.F.
AND
RECOMMEND
APPROVAL
(FZV-16-03)
8:20 pm**

A motion was made by Netteburg to adopt the Findings of Fact as modified by the Bigfork Land Use Advisory Committee for FZV-16-03 and approve the variance. The motion was not seconded explicitly but by default by Hash. Those changes are as follows.

Finding #1 - Strict compliance with the regulations would limit the reasonable use of property because the topography of the lot would limit the permitted accessory shop to the technical northeast front yard setback or the colloquial "front yard".

Finding #2 - Strict compliance with the regulations would ~~not entirely~~ deprive the applicant of rights enjoyed by other properties on Conifer Lane ~~because the applicant could construct a smaller shop in front of the doorway of the house within the rear yard.~~

Finding #3 – The alleged hardship is directly associated to the topography of the lot because the house and drain field were placed on the flat, back corner of the property making the majority of the lot front yard and limiting area for the shop to the front corner near Conifer Lane.

Finding #4 – The alleged hardship appears to be peculiar to the subject property because the topography of the lot was a determining factor in locating the house towards the back of the lot thereby making the majority of the property "front yard" and unbuildable.

Finding #5 – The alleged hardship ~~was not does not entirely appear to be~~ created by the applicant because the topography of the lot influenced the location and configuration of the single family dwelling towards the back corner of the lot.

Finding #6 – ~~The hardship may be economic because although the hardship is caused by the lot's topography, a smaller shed in front of the house door or bringing in fill to create a level buildable area on the northwest side of the property are two zoning compliant alternatives. If the hardship is economic, it is not pertinent to the decision because it was created, instead, by the county.~~

Finding #7 – Granting of the variance request would minimally affect neighbors because the area is heavily vegetated and a tree buffer exists between the property to the north, however the shop will be minimally shielded from the property across the road and those driving down Confer Lane, a private dead end road.

Finding #8 – The variance requested appears to be the minimum variance which would alleviate the alleged hardship because the shop would be located in the only ~~other~~ reasonable building site.

Finding #9 – Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district ~~because other properties in the vicinity~~ because the topographic constraints requiring the proposed placement of the shop are unique to the subject property and other lots may be able to stay in compliance with applicable zoning regulations.

**BOARD
DISCUSSION**

None

**ROLL CALL TO
ADOPT F.O.F.
(FZV-16-03)
8:20 pm**

On a roll call vote the motion passed unanimously.

**COLLIN &
TREENA MITTS
(FCU-16-09)
8:20 pm**

A request from Collin & Treena Mitts, for a conditional use permit to establish a ‘Home Based Business’ in order to store insulation material in a detached garage on property located within the Labrant-Lindsey Lane Zoning District and zoned Labrant Lindsey Lane. The subject property is located at 760 Labrant Road and contains approximately 2.4 acres.

**STAFF REPORT
8:25 PM**

Nielsen reviewed Staff Report FCU-16-09 for the Board.

**BOARD
QUESTIONS
8:32 PM**

Hash asked if Nielsen supported the additional findings.

Nielsen said yes, however, one of the conditions gives them more leeway than the regulations allow. It states they may use up to half of the building and leen-to and the regulations state one third.

Hash asked if the flagger was something the planning board could require.

Nielsen stated she believed so, and the applicant was willing to do it.

Hash asked about the proposed hours being seven (7) days a week.

Nielsen stated that the applicant may be willing to limit them to Monday through Friday.

Klempel asked how many trucks drive in and out of the business.

Nielsen stated they have one (1) box truck that goes in and out every day and the applicant is anticipating twelve (12) to fifteen (15) deliveries a year.

Klempel has if a flagger would be on duty.

Nielsen stated that one of the neighbors was concerned about safety, and the applicant stated he would put on a vest and flag the trucks in and out to address that concern.

**APPLICANT
PRESENTATION
8:32 pm**

Collin Mitts-760 Labrant, Kalispell stated this is a small company with minimal employees. The employees do not park at this location but meet at the job site or the company that delivers the insulation. Mitts stated that his brother-in-law is his partner and he drives the box truck and it is generally not parked at the shop. Mitts stated he had one trailer that he parks inside the shop. He has some scaffolding and ladders in one of the lean-to's. He stated the business will not generate a lot of traffic, compared to the boy scout camp when it is open. Mitts stated he needed to store material there basically as a back-up as most of the material is delivered to the job sites. He picks up his barrels of urethane at the suppliers and when the barrels are empty they are off loaded at the property and either sold or given away. Mitts stated that contractors do not come in and out of the property; most of the plans are emailed to him. Mitts addressed the concerns of the neighbors concerning the urethane chemicals that would be stored at the shop stating the chemical would be on a concrete floor inside the shop and he was willing to get spill kits in case of spillage. Mitts stated he is willing to modify the hours of operation if necessary.

**BOARD
QUESTIONS
8:38 pm**

Netteberg asked about the shared driveway and the applicant not getting along with neighbors.

Mitts stated he planted some trees to address privacy concerns. He stated the neighbor put stakes down the middle of the driveway to separate the two (2) properties.

**PUBLIC
COMMENT
8:42 PM**

Treena Mitts-760 Labrant, Kalispell spoke in favor of the application.

Adam Britt-750 Labrant Road, Kalispell stated that the access off Labrant road was not twenty (20) feet. He stated that he did not feel the road was adequate to accommodate semi-truck traffic and he did not feel they could access the property. Britt stated that customers do come to the property. He stated there was traffic from employees and the box truck and two enclosed trailers. Britt stated that the applicants also have a garbage trailer on site. He stated the daily operation would increase traffic tremendously. Britt stated he thought they would utilize over half of the shop if you included the square footage of the box truck and the trailers. Britt stated he was concerned about the forty square foot sign addressed in the staff report saying it was ridiculous in a residential neighborhood. Britt stated he was concerned about the noise with the loading and unloading of trucks. He was also concerned about the hours of

operation stating the applicant left at 6:45 am. Britt was also concerned about the disposal of waste and hazardous waste. Britt stated that the hazardous materials are stored 100 feet from his well. He is also concerned about this setting a precedent.

Bill McGunagle-470 Labrant, Kalispell spoke in opposition. He stated he bought the property because of the view. He does not want a precedent set with more commercial venues moving in. McGunagle stated that the business should be in a commercial location not a residential neighborhood.

Don Janes-706 Labrant, Kalispell-stated he moved in seven years ago. He bought for the aesthetic value. He was concerned about this setting a precedent.

The Board took a five minute break.

Angela Janes Walker-706 Labrant, Kalispell stated that she agreed with what had already been said. She stated concern with increased use and activity levels as well as changing the rural character of the neighborhood and was open to working with the applicant to address concerns. She was also concerned about urethane turning toxic if burned and the possibility of well contamination if spilled.

**APPLICANT
REBUTTAL
9:16 pm**

Collin Mitts stated that the shop was metal. If the shop burns or his house burns it would emit cyanide gas. He stated the box truck and urethane trailer are the only vehicles owned by CM insulation. He stated that his house was under construction and that created additional garbage but it was now complete. He stated he was not looking to bring in a 70 foot truck. He would bring in a pup which did have the capability of turning around in his driveway. He stated that when they leave the property the conditional use permit would go with them. He stated he was willing to give up the sign.

Klempel asked if everything was going to be stored inside the building.

Mitts said yes.

**STAFF
REBUTTAL
9:24 PM**

Nielsen stated that the staff report was based on the application and a staff site visit. She stated the easement off Labrant Road is within a 60 foot easement. Easement and road width are two different things. The square footage of the trucks should not be included in the amount of area used. She also wanted to clarify the trips per day, stating these were addressed in the conditions with 16 trips per day being the maximum allowed.

**BOARD
DISCUSSION
9:25 PM**

Klempel asked about the requirement for home based business signage.

Nielsen stated that it should be compliant with the neighborhood it was in and that the Labrant-Lindsey neighborhood plan did not address signage at all.

Noble asked about the conditional use sunseting if the applicant sold the property. Netteberg stated the conditional use goes with the property.

The Board discussed the potential for well contamination and concluded that the

material does not become active until combined. They discussed the spill kit. Hash asked about a condition that employees would not meet at the property. Mitts said that would be okay.

Hash asked about the outside storage of insulation on a trailer.

Mitts stated that was his trash trailer and he could build sides on it so the neighbors could not see the trash.

Hash asked about the hours of operation.

Mitts stated 8 am to 5 pm; Monday through Friday would work for him.

Hash asked about the garbage stored on the truck.

Mitts stated it was personal and business and he took it to the dump as needed.

Hash asked about the hazardous material spillage.

Mitts stated he would buy spill kits. He stated he would seal the floor also.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-16-09)
9:36 pm**

Netteberg made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
9:36 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FCU-16-09)
9:36 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
9:36 pm**

Noble made a motion seconded by Klempel to accept Staff Report FCU-16-09 as Findings-of-Fact and Approve the Conditional Use Permit with the following changes:

9. Hours of operation, including times of delivery shall not exceed normal business hours and shall occur between 8:00 am and 5:00 pm, Monday through Saturday.
1. *All Urethane insulation materials shall be stored inside the garage at all times with an approved spill kit relevant to the amount of chemicals being stored on the property.*
2. *No business sign shall be allowed for the insulation business in*

order to maintain the rural character of the neighborhood.

3. *During deliveries, the business owner shall have a flagger on-site to assist the delivery driver safely enter and exit the property.*
4. *This conditional use permit shall sunset upon sale of the subject property (760 LaBrant Road) by the applicants, Collin and Treena Mitts.*
5. *Employees shall not park on the premise of the subject property, 760 LaBrant Road.*

**BOARD
DISCUSSION
9:39 pm**

None

**ROLL CALL TO
APPROVE
9:39 pm**

On a roll call vote the motion passed unanimously.

**CARRIE
MCIPHERSON
(FCU-16-11)
9:40 pm**

A request from BJ Grieve of WGM Group, Inc., on behalf of Carrie McPherson, for a conditional use permit to build a two phase, 349 rental unit, six building mini-storage on property within the Blanchard Lake Zoning District and zoned B-2 (*General Business*). The applicant is proposing Phase 1 to include three buildings and Phase 2 to include three additional buildings with the potential for a 30 foot by 30 foot office. The subject property is located at 5060 Highway 93 South and contains approximately 6.7 acres

**STAFF REPORT
9:40 pm**

Valade reviewed Staff Report FCU-16-11 for the Board.

**BOARD
QUESTIONS
9:42 pm**

None.

**APPLICANT
PRESENTATION
9:42 pm**

BJ Grieve-WGM Group-151 Business Center Loop Suite A stated he represents the applicant. Grieve stated this property was a family transfer. At the time of the transfer a sanitary restriction was placed on the property. Grieve stated the applicant was in the process of lifting the sanitary restriction and was working on the COSA, it was under way. Grieve stated the approach permit was already

taken care of. Grieve requested the permit to be phased and requested, if it was acceptable to the board to amend conditions 9 and 10 concerning inspection after 12 months, to two year inspection for the first phase and two years for the second phase.

**BOARD
QUESTIONS
9:45 pm**

The Board discussed the two year time frame in condition 9.

**PUBLIC
COMMENT
9:47 pm**

None

**STAFF
REBUTTAL
9:48 pm**

None

**APPLICANT
REBUTTAL
9:48 pm**

None

**BOARD
DISCUSSION
9:48 pm**

None

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-16-11)
7:44 pm**

Netteberg made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
9:48 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FCU-16-11)
9:48 pm**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION
9:48 pm**

None

**MAIN MOTION
TO APPROVE
(FCU-16-11)
7:50 pm**

Noble made a motion seconded by Netteberg to accept Staff Report FCU-16-10 as Findings-of-Fact and Approve the Conditional Use Permit with the following changes to condition 4;

4. The subject property shall be required to undergo Sanitation in Subdivision review *and obtain a COSA rewrite to address water, storm water and wastewater* before being approved for the proposed use.

**BOARD
DISCUSSION
9:50 pm**

None

**ROLL CALL TO
APPROVE
(FCU-16-11)
9:50 pm**

On a roll call vote the motion passed unanimously.

**MARK & KAROL
HICKCOX
(FCU-16-10)
9:51 pm**

A request from Mark & Karol Hickcox, for a conditional use permit to establish a 'Bed and Breakfast Establishment' on property located within the West Glacier Zoning District and zoned R-5 (Two-Family Limited Residential). The subject property is located at 524 Riverbend Drive and contains approximately 0.5 acres.

Hash recused himself from this application.

**STAFF REPORT
9:53 pm**

Nielsen reviewed Staff Report FCU-16-10 for the Board.

**BOARD
QUESTIONS
9:56 pm**

None.

**APPLICANT
PRESENTATION
9:57 pm**

Mark Hickcox appeared by telephone. Hickcox stated that he felt all requirements of the conditional use permit had been met.

**BOARD
QUESTIONS
9:57 pm**

None

**PUBLIC
COMMENT
9:57 pm**

Sharon Heupel-532 Riverbend Dr, West Glacier stated her property adjoins the applicants. Heupel stated the shared driveway dissects the property with the lower part of the driveway on Hickcox's property and the upper part of the driveway and the parking area for the applicant's home and the additional garage is on Heupel's property. Heupel stated that there was not a legally filed easement for this driveway. Heupel stated that the garage that was built behind the house was on her property and that the Hickcox had not had a survey done prior to building. Heupel stated her main concern was that her property would be used for that operation. Heupel stated that was too much use, an overuse, and encroachment onto her property.

Theresa Woehler-525 Sloan Lane, West Glacier stated that her biggest concern regarding the building of the addition was that it was not up to code. Woehler stated that if the conditional use permit use granted she didn't feel the rules and regulations would be adhered to. Woehler was concerned about the septic and stated that there is also an unsafe propane tank on the property. She was also concerned about the noise. (Woehler brought a picture of the addition on her phone and shared with the Board, she was asked to email the photo in, but we have not received it.)(She did show her phone to the camera).

**STAFF
REBUTTAL
10:14 pm**

Nielsen stated that per the complaint close out the applicants were within their setback and legal height requirements.

Nielsen stated that as far as the VRBO-the applicant stated she was unaware of the zoning regulations and that as of April 25 the applicants modified the required stay to 30 days or longer.

Noble asked if the house was a duplex.

Nielsen stated no, it was a single family residence.

Noble asked if the applicant would live onsite.

Nielsen stated no, the applicants would hire an onsite manager to live in the apartment above the garage, and that person would cook the breakfast for the guests.

Hickcox stated that he believed that all the issues had been addressed

Klempel asked if the property had ever been surveyed.

Hickcox stated it had not. He stated that it had been a shared driveway for some time. Hickcox stated that the Heupel's cross their property on the lower part of the driveway to get to their home, and they cross the Heupel's property on the upper part of the driveway to get to their home. He stated that there was ample parking for at least four (4) cars.

**APPLICANT
REBUTTAL
10:17 pm**

**BOARD
DISCUSSION
10:20 pm**

The board discussed the parking requirements.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-16-10)
10:26 pm**

Netteberg made a motion seconded by Noble to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
10:26 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FCU-16-10)
10:26 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
(FCU-16-10)
7:50 pm**

Noble made a motion seconded by Netteberg to accept Staff Report FCU-16-10 as Findings-of-Fact and Approve the Conditional Use Permit with the following changes:

4. A minimum of 3 4 standard vehicle parking spaces shall be clearly established on the subject property in accordance with applicable zoning regulations [FCZR Sections 6.03.010].

Additional condition

10. A lot line retracement be done by a Montana professional licensed surveyor of lot five (5).

**BOARD
DISCUSSION
10:29 pm**

None

**ROLL CALL TO
APPROVE
(FCU-16-10)
10:29 pm**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS
10:30 pm**

None

**NEW BUSINESS
10:31 pm**

None

ADJOURNMENT Netteberg made a motion to adjourn.
10:31 pm



C. Mark Hash, Chairman




Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 7/16